

Medical Provider Network Regulations	WRITTEN COMMENTS 1 <sup>st</sup> 15 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
General	States that the regulations will cause fragile overburdened medical system to implode.	Alison Martino Adjuster and Injured Worker Email dated Feb. 11, 2005	We disagree. The regulations are authorized by Labor Code 4616 et seq.	None.
Section 9767.6	Objects to deletion of word “authorize” and replacement with word “provide for.”	Diane Przepiorski California Orthopaedic Association  Feb. 14, 2005	We disagree. We have received questions concerning if the term “authorize” means that before the employee can be treated, the treatment must be approved by the UR process. We believe “provide for” clarifies that the employer/insurer does not need to approve of the treatment before the injured worker can be treated.	None.
Section 9767.3(8)(C)	Supports new language. Suggests further clarification: “1. That the contractual MPN agreement must be between the provider/medical group and the carrier/self-insured employer <u>responsible for the care of the injured worker</u> . 2. That other entities performing UR or other services for the carrier/self-insured employer responsible for the care may not interfere with the MPN contract by attempting to impose other contract terms.”	Diane Przepiorski California Orthopaedic Association Feb. 14, 2005	We disagree. The proposed language may be too limiting.	None.
Section 9767.9(e)(2)	States that the (e)(2) subdivision concerning chronic care contradicts the time frame in Labor Code section 4616.2(c)(3)(B).	Dennis Knotts Instructor for Insurance Education Association Email dated Feb. 15, 2005	We disagree. Labor Code section 4616.2 is for continuity of care. The regulation (section 9767.9) is for transfer of care situations.	None.
Section 9767.7	Suggests using the same time periods (20 days) for second and third opinions as set forth in Labor Code section 4062 for consistency.	Dennis Knotts Instructor for Insurance Education Association Email dated Feb. 15, 2005	We disagree. The employee should allowed adequate opportunity to make an appointment for a second or third opinion. Labor Code section 4062 is not comparable.	None.
Section 9767.12	Commenter feels that adding 30 day notice requirement before MPN can be effective is unnecessary (although understands it with	Stuart Baron Workers’ Compensation Claims Control	We disagree. The 30 day period allows the employees to review the materials and MPN physicians and to	None.

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	regard to a “change”). With MPN there is no enrollment period, employee is free to pre-designate at any time prior to injury to opt out of MPN, so what is the benefit of the thirty day notice?	Email dated Feb. 18, 2005	pre-designate if they so choose.	
Section 9767.3(c)	Objects to the requirement to provide a complete copy of the cover page and application to the DWC because the applications can be hundreds of pages long. Suggests that the additional copy be limited to the core sections: employee notifications materials, but not the geo-mapping and physician lists.	David Mitchell Republic Indemnity Co. Email dated Feb. 21, 2005	We agree in part. The section will be amended to allow the applicant to file information on computer disks or CD Roms. This will alleviate the applicant’s need to file hundreds of pages.	The section will be amended to allow the applicant to file information on computer disks or CD Roms.
Section 9767.3(d)(8)(C)	Objects to the new requirement regarding the contractual agreement. It is not realistic to make the MPN applicant responsible for Labor Code section 4609 compliance. Suggests DWC require a statement from networks that they are in compliance with Labor Code section 4609.	David Mitchell Republic Indemnity Co. Email dated Feb. 21, 2005	We disagree. The DWC has authority over the MPN applicant, not the networks. Therefore, the statement must be from the MPN applicant.	None.
Section 9767.5	Suggests deleting specialty requirement as large number of common injuries can be treated by various specialties, the standard will be difficult to meet in rural areas, and Labor Code section 3209.3 refers to “type” of physician.	David Mitchell Republic Indemnity Co. Email dated Feb. 21, 2005	We disagree. Section 9767.5(d) allows networks in rural areas to proposed alternative standards for accessibility. Labor Code section 4616.3 requires that the employees have the option of a second or third opinion, and the selection of the physician shall be based on the physician’s “specialty” or recognized expertise in treating the particular injury.	None.
Section 9767.8	For change of 10% or more for physicians, suggests DWC require a statement from network that it will notify MPN applicant if such a change occurs. For change of 25% or more of covered employees, feel it is unclear. Why would the	David Mitchell Republic Indemnity Co. Email dated Feb. 21, 2005	We disagree. Re 10% change, the DWC has authority over the MPN applicant, not the networks. Re the 25% change of employees, this is a very large percentage change. It is important that the MPN is	None.

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	Division need to know if number of employees declines? The requirement should be deleted.		monitoring the network and changes that affect its ability to provide medical treatment. By being required to monitor for changes, the DWC will be assured that the MPN is performing continuing quality control.	
Section 9767.12(a)	Requirement to send notice of MPN to employees 30 days prior: not clear if applies to only newly approved MPN or to new policyholders. If both, the proposed time frame could jeopardize medical control. The thirty day notice requirement should not apply employees whose employer is a new policy holder with a carrier that has an existing MPN.	Sharon Faggiano Employers Compensation Insurance Company	We disagree. The thirty day notice to the employees provides the employees with the opportunity to review the MPN provider's listings and to allow the employees to predesignate a physician should the employees choose not to participate in the MPN.	None.
Section 9767.3(d)(8)(C)	Recommends deleting language referring to Labor Code section 4609 or this modification: "The MPN applicant shall include a statement from the MPN that the MPN is in compliance with Labor Code section 4609."	Brenda Ramirez CWCI Feb. 23, 2005	We disagree. Labor Code section 4609 prevents the improper selling, leasing or transferring of a health care provider's contract, which is an abuse that could occur with MPN networks. The DWC has authority over the MPN applicant, not the networks. Therefore, the statement must be from the MPN applicant.	None.
Section 9767.12	Recommends deleting the notice requirement for covered employees since it is not authorized by statute, is ineffective, overbroad, costly and provides no benefit to the injured employees.	Brenda Ramirez CWCI Feb. 23, 2005	We disagree. Labor Code section 4616.3(b) requires the employer to notify the employee about his or her right to be treated by a physician of his or her choice and the method by which the list of providers may be accessed by the employee. Section 4616.2 (c) requires employers to provide notice of its written continuity of care policy. Section 4616 provides the administrative director with the authority to develop	None.

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			regulations that establish procedures. The notices are essential in order for the employers to comply with the Labor Code and in order for the employees to understand the MPN rules and procedures.	
Section 9767.5(a)	Recommends deleting the requirement for an MPN to “have at least three physicians of each specialty expected to treat common injuries experienced by injured employees...” The Labor Code provides authority for type not specialty.	Brenda Ramirez CWCI Feb. 23, 2005	We disagree. Labor Code section 4616.3 requires that the employees have the option of a second or third opinion, and the selection of the physician shall be based on the physician’s “specialty” or recognized expertise in treating the particular injury.	None.
Section 9767.8(a)(2) and (e)	Object to requirement to file a modification for change of 10% or more of physicians or 25% or more of employees because there is no rationale. The regulations lack clarity and necessity.	Brenda Ramirez CWCI Feb. 23, 2005	We disagree. It is important that the MPN is monitoring the network and changes that affect its ability to provide medical treatment. By being required to monitor for changes, the DWC will be assured that the MPN is performing continuing quality control.	None.
Section 9767.12	Letter must provide an explanation of the worker’s rights and responsibilities under the MPN that is correct and understandable. Recommends that the regulations include a requirement that a specific statement, printed in at least 15 point type and located in a separate highlighted or boxed position, be included in all notices informing workers of their right to select any provider within the MPN after the first visit.  Providing a toll-free number does not guarantee that the worker will ever receive a listing of plan providers, much less a list that is provided immediately so that the worker	J. David Schwartz CAAA Feb. 23, 2005	We disagree with the specific format recommendations. Section 9767.12 requires the employee notification to include an explanation of the worker’s right and responsibilities under the MPN. The notices are included with the MPN applicant and must be correct and understandable, or the MPN application is denied.  We disagree. Section 9767.12 requires the employer or insurer to inform the employee in the initial notice how to review, receive or	None.  None.

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	<p>can make a timely decision. The regulations should be rewritten to mandate a specific procedure under which an injured worker can obtain a complete list of plan providers and specific time limits must be added to assure that this information is available when the worker needs it.</p> <p>There should be a requirement that all notices include a highlighted (or boxed) statement setting forth the procedure under which a worker can request access to the MPN provider directory and further requiring that this statement shall specify that upon request (either written or oral) a written copy of the provider directory will be mailed to the worker within 24 hours of that request.</p> <p>The notice should fully describe the availability of specialists both within and outside the network and workers should be informed that the list of specialist providers within the MPN can be accessed by using the same procedures as for all other providers.</p> <p>The regulations should be amended to require that information on how to obtain out-of-area treatment must be made available within 24 hours of receiving a request from an injured worker. The rules should specify that the</p>		<p>access the MPN provider. The employer or insurer is required to maintain and make the complete listing available.</p> <p>We disagree. Section 9767.12 requires the employer or insurer to state how the provider directory may be reviewed, received or accessed. Different access methods will work for best for different industries. In some instances, MPNs are statewide with tens of thousands of providers. Mailing the directory to all covered employees in within 24 hours in those situations is not reasonable.</p> <p>We disagree that the regulations need to be modified to comply with this comment. The MPN only has control over specialists within the MPN. However, section 9767.9(a)(3) requires the employer or insurer to make the MPN provider directory accessible and (9) requires the employer or insurer to explain how to obtain a referral to a specialist within or outside the MPN.</p> <p>We agree in part. We disagree that non emergency treatment must be available within 24 hours. Section 9767.5 sets forth the required timeframes.</p>	<p>None.</p> <p>None.</p> <p>Section 9767.12 (a)(4) will be modified to include “and what the access standards are under section 9767.5.” Section</p>

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	<p>worker must be informed of his or her right to see the type of physician appropriate to treat the injury and that any necessary authorization to receive out-of-area treatment must be provided within 24 hours or receiving a request for treatment.</p> <p>There is no meaningful enforcement of Section 9767.5 access requirements.</p>		<p>We disagree. The AD may suspend or revoke the MPN. The employee may file a Declaration of Readiness with the WCAB if the required access to medical care is denied.</p>	<p>9767.5 is amended to require a written access policy for a covered employee temporarily working or traveling outside the MPN geographic service area; a former employee who permanently resides outside the MPN geographic service area; and an injured employee temporarily residing outside the MPN geographic service area. The section also provides the requirements for the written policy and the timeframes for treatment for emergency and non-emergency treatment.</p> <p>None.</p>
Section 9767.5	The regulations must define the terms “readily available” and “readily accessible.” Suggests initial appointment be available with 24 hours, subsequent appointment within 3 days and mandatory reporting of “wait times” for appointments to allow enforcement of these regulations.	J. David Schwartz CAAA Feb. 23, 2005	We disagree. Section 9767.5 defines the terms by setting forth the access standard requirements. Subdivisions (f) and (g) address the appointment time frames.	None.
Section 9767.12	Recommends amending to provide that all notices must inform the worker that the state	J. David Schwartz CAAA	We agree.	Section 9767.12((a)(4) is amended to require the

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	<p>regulations require that an appointment must be available with the specific time limits proposed above.</p> <p>Recommends amending to include a requirement that the DWC be informed every time a MPN is contacted by a worker who had a problem getting an appointment within 3 days.</p>	Feb. 23, 2005	<p>We disagree. The DWC intends to post a MPN complaint form on its web page and is developing a procedure to handle complaints or problems with MPNs.</p>	<p>initial notice to include a description of the access standards under section 9767.5.</p> <p>None.</p>
Section 9767.9	<p>How will DWC know if improper transfer of care letters are sent?</p> <p>How will injured worker know transfer is illegal? Regulations should require a copy of the letter be sent to the injured worker's attorney.</p> <p>It is an abuse to inform injured worker that the care would be transferred and to offer settlement of future medical claims.</p> <p>Will the physician be paid for copy of medical file? What if physician does not provide records timely? What assurance is there that new physician will have time to review records? What additional testing will be needed by the new physician to determine the continuing treatment of the worker?</p> <p>Recommends this section be withdrawn.</p>	<p>J. David Schwartz CAAA Feb. 23, 2005</p>	<p>The DWC will know if the employee, his or her attorney or physician complains to the DWC or WCAB.</p> <p>If the injured worker is represented, he or she should provide the letter to the attorney.</p> <p>It depends on the facts. If the employee believes an abuse is occurring, he or she should inform the DWC.</p> <p>The employer is liable for the payments per Labor Code section 4600.</p> <p>We disagree. The regulation is needed to provide guidance.</p>	<p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p> <p>None.</p>
Section 9767.12	Even if insurer has not yet accepted a claim, it	J. David Schwartz	Section 9767.12 requires that the	None.

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	should provide 9767.12 notification if requiring treatment in the MPN.	CAAA Feb. 23, 2005	initial notice be sent to all employees 30 days prior to the implementation of the MPN, at the time of hire, or when an existing employee transfers into the MPN and at the time of injury. Therefore, an employee will receive the notification even if the insurer has not yet accepted the claim.	
Section 9767.9(f)	Opposes change that notification must be in English and Spanish. It is meaningless if employee does not understand it.	J. David Schwartz CAAA Feb. 23, 2005	We disagree. This is consistent with Labor Code sections 124, 3550, 3551, and 5401.	None.
Section 9767.3(d)(8)(C)	Commenter hopes that the new language regarding Labor Code section 4609 will correct problem of silent PPOs.	J. David Schwartz CAAA Feb. 23, 2005	We agree.	None.
Section 9767.10(b)	Specification that “acute condition” shall not last more than 30 days should be a medical determination and this modification should be withdrawn.	J. David Schwartz CAAA Feb. 23, 2005	We agree.	This definition will be adopted.
Section 9767.3(d)(8)(C)	Believes there is no statutory authority for imposing a requirement on MPN applicants to confirm contractual compliance with Labor Code section 4609. Requirement would make MPN applicant responsible for reviewing all provider contracts.	Keith Bateman Association of California Insurance Companies Feb. 24, 2005	We disagree. Because the DWC has authority over the MPN applicant, and not the networks, the statement must be from the MPN applicant.	None.
Section 9767.3(d)(8)(G) and Section 9767.5(e)(2) and Section 9767.12(a)(5)	The employer/insurer has an obligation to provide medical care whether using an MPN or not. This is not an MPN issue and should not be part of the application.	Keith Bateman Association of California Insurance Companies Feb. 24, 2005	We disagree. This subdivision addresses treatment when the employee is outside the MPN geographic area. Although it is correct that treatment must be provided, the MPN applicant must explain how the treatment outside an MPN will coordinate with treatment inside the MPN.	None.
Section 9767.8(e)	Insurers do not maintain information on the numbers of employees of its policy holders.	Keith Bateman Association of California Insurance Companies	The MPN applicant will need to obtain this information from the employers who are participating.	None.



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		Feb. 24, 2005		
Section 9767.12(a)	Requiring notification 30 days prior to implementation of MPN has no statutory authority. It will only slow down implementation of MPN. Insurers will have to provide notification to policy holders who notify the employees.	Keith Bateman Association of California Insurance Companies Feb. 24, 2005	We disagree. Prior notice will allow the employees an opportunity to review the list of MPN providers and allow an opportunity to pre-designate their personal physician.	None.
Section 9767.3(d)(8)(C)	An insurer cannot be expected to guarantee network compliance with a statutory requirement regarding contracts to which the insurer is not a party. The only situation where this would work is where the insurer and the network are the same entity. Recommends amending to state: "Where the MPN network is owned and operated by the MPN applicant, the MPN applicant shall confirm that the contractual agreement is in compliance with Labor Code section 4609."	David L. Corum American Insurance Association February 24, 2005	We disagree. Because the DWC only has authority over the MPN applicant, the statement must be from the MPN applicant.	None.
Section 9767.6(b)	Instead of "provide for" commenter recommends, "authorize a health care provider within the MPN to provide..." This would make paragraph (b) and (c) consistent.	David L. Corum American Insurance Association February 24, 2005	We disagree. We have received questions concerning if the term "authorize" means that before the employee can be treated, the treatment must be approved by the UR process. We believe "provide" clarifies that the employer/insurer does not need to approve of the treatment before the injured worker can be treated.	None.
Section 9767.7	Recommends amending the section to require that the 2 <sup>nd</sup> or 3rd opinion appointment occur within the 60 day period as oppose to the appointment scheduled within 60 days.	David L. Corum American Insurance Association February 24, 2005	We disagree. This is a maximum period. The employee should be allowed sufficient time to consider the diagnosis or treatment prescribed prior to waiving his or her right to a second or third opinion.	None.
Section 9767.3(d)(8)(C)	Recommends modifying as follows: "The MPN applicant shall include a statement from the MPN that the MPN contract agreement is	Jose Ruiz SCIF February 24, 2005	We disagree. Because the DWC only has authority over the MPN applicant, the statement must be from	None.

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	in compliance with Labor Code section 4609.”		the MPN applicant.	
Section 9767.7(d)	<p>Recommends adding language: “that has not been previously provided.”</p> <p>If the injured worker requests a copy of the medical records that were sent to the second opinion physician, there will be redundancy when providing a copy of the medical records to be provided to the third opinion physician.</p>	<p>Jose Ruiz SCIF February 24, 2005</p>	<p>We disagree. The employee has the right to ensure that all appropriate medical records are sent to the third opinion physician.</p>	<p>None.</p>
Section 9767.5(a)	<p>Recommends changing language “specifying three physicians of each specialty” to “three physicians qualified to treat common injuries.”</p>	<p>Jose Ruiz SCIF February 24, 2005</p>	<p>We disagree. Labor Code section 4616.3 requires that the employees have the option of a second or third opinion, and the selection of the physician shall be based on the physician’s “specialty” or recognized expertise in treating the particular injury.</p>	<p>None.</p>
Section 9767.8(a)(2) and (e)	<p>Requests section 9767.8(a)(1) and (2) be deleted.</p> <p>A change of 25% or more in the number of covered employees, or a change of 10% or more in the number of physicians, should not constitute a Modification. New employees will be regularly routed into the MPN. The regulation does not address how the MPN is applied to new employees during the 60 day approval time. This will add administrative costs.</p>	<p>Jose Ruiz SCIF February 24, 2005</p>	<p>We disagree. The changes in the numbers and types of physicians and employees are important as the changes will affect access to medical care. The MPN will be able to anticipate a percentage change this large and file prior to the 10% and/or 25% change.</p>	<p>Section 9767.8(a)(1) will be changed to include the words “in the composition” to refer to the physicians.</p>
Section 9767.12(a)(9)	<p>Recommends amending section to: “How to obtain a referral to a specialist within the MPN and if the MPN does not contain a physician of that specialty, how to obtain the referral to a specialist outside the medical provider network.”</p> <p>Concerned “if needed” could be interpreted to</p>	<p>Jose Ruiz SCIF February 24, 2005</p>	<p>We disagree. The section is clear.</p>	<p>None.</p>

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	mean, if the employee needs a referral to a specialist.			
Section 9767.3(e)(15)	Concerned about breach on HCO capacity. Recommends the following language: “Describe the number of ... within the approved capacity of the HCO <u>by attaching as an Exhibit to the Application, a complete and detailed explanation of how the health care organization providing health care services pursuant to this section calculated that the estimated number of covered employees with a proposed Medical Provider Network Plan, when combined with the number of employees already covered by the health care organization at the time of application for certification under this section, will not exceed the health care organization’s capacity to provide services as certified by the administrative director.</u>	Steve Cattolica AdvocCal US Healthworks Email Feb 23, 2005	We disagree. Labor Codes section 4616.7 provides a “deemed approved” status for a HCO certified pursuant to section 4600.5.	None.
General	Concerned that employee may change physicians as many times as he/she desires rather than pursue the second and third physician opinion procedure.  The regulations do not provide a method for the insurer/employer to challenge reasonableness of treatment and medical appropriateness.  The employer will not be able to control any abuse or inappropriate treatment.	Dennis Knotts Email Feb. 28, 2005	We disagree that this requires a change. The employer or insurer chooses the physicians within the MPN and therefore, the employee is entitled to change among the MPN physicians as many times as necessary.  This comment goes beyond the scope of these regulations. The Utilization Review regulations deal with authorization for medical treatment.  This comment goes beyond the scope of these regulations. The Utilization Review regulations deal with	None.  None.  None.

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	<p>The regulations do not incorporate the controls in Labor Code sections 4600, 4601, 4620, and 4050.</p>		<p>authorization for medical treatment.</p> <p>We disagree. Section 9767.6(b) states that the employer shall provide treatment consistent with the guidelines adopted by the AD pursuant to Labor Code section 5307.27 or prior to the adoption, ACOEM. Section 9767.7 requires that second and third opinion physicians' recommended treatment be in accordance with Labor Code section 4616(e). Labor Code section 4601 allows employees to change physicians at any time after the initial 30 day period. Labor Code section 4616(b) provides that the employee has the right to be treated by a physician of his or her choice after the first visit. Labor Code section 4620 deals with medical legal expenses and is beyond the scope of these regulations. Labor Code section 4050 deals with the employer's request for an employee to submit to an examination by a physician and is beyond the scope of these regulations.</p>	<p>None.</p>
	<p>The limit on chiropractic and physical therapy treatments would also apply to a MPN.</p>		<p>We agree. We disagree that it is necessary to repeat Labor Code section 4604.5 in the MPN regulations.</p>	<p>None.</p>

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	<p>The regulations must make it clear which of these controls apply to the MPN.</p> <p>Networks such as First Health are so big that employers are unable to weed out unacceptable physicians. All of the dispute resolution processes are designed for the employee.</p>		<p>We disagree that the regulations are unclear.</p> <p>We disagree. The insurer or employer has control over the physicians in the MPN per Labor Code section 4616.</p>	<p>None.</p> <p>None.</p>